



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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Navajo President Joe Shirley, Jr., warns that firing top officials will have devastating impact on Nation's economic development

Council move to fire AG, Deputy AG exposes Nation to potential lawsuits

WINDOW ROCK, Ariz. — Navajo Nation President Joe Shirley, Jr., has urged Navajo Nation Council delegates to consider the catastrophic economic impacts to the Nation that will result from firing the Attorney General, Deputy Attorney General and removing the Navajo Nation Supreme Court Chief Justice.

The Council has scheduled a special session for Nov. 30 but it is believed action on the officials' removal could be taken before then.

"Any action by the Council to remove, punish, sanction or interfere with the Attorney General, the Deputy Attorney General or the Chief Justice will ruin the hopes of the next administration and the next Council to bring economic opportunity to the Navajo Nation," President Shirley said. "Financial institutions will perceive the Navajo Nation as an unstable business environment, and a place where the Navajo courts are influenced by politics and would likely be stacked against them."

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— Navajo Nation President Joe Shirley, Jr.

On Nov. 5, the Council directed that legislation be drafted to fire Attorney General Louis Denetsosie and Deputy Attorney General Harrison Tsosie after Assistant Attorney General Henry Howe said he could not provide financial information about the Office of the Special Prosecutor outside of an executive session.

The President warned that such an action would send an unmistakable message to banks, businesses, states and the federal government that the Navajo Nation government is unstable and that its independent court system is subject to political tampering by a legislature that disagrees with its decisions.

"We will produce the documents to the Council in executive session but not to any members of the Council who are under indictment at this time," Mr. Howe said. "There is an inherent conflict of interest for any of you under indictment to receive information about the special prosecutor's investigations."

No bank would want to deal with the Navajo Nation if its two top legal officers and its entire Supreme Court are removed for political reasons, he said. Agreements, contracts, and other commitments could come into question if it is perceived that there is no stability in the Navajo judicial system or Department of Justice.

To date, 77 delegates have been indicted on fraud, theft and conspiracy charges related to the discretionary fund investigation.

Small and large firms doing business or seeking to do business on the Navajo Nation would become concerned that their relationship with the Nation may be jeopardized based on political whims that impact fairness, trust and independence of the court system.

Council delegates accused Mr. Howe, the Department of Justice, the Supreme Court and the Executive Branch of mounting a conspiracy against them.

That would have a negative impact on chapters, vendors and the Navajo People.

Legislation to remove the Attorney General and Deputy Attorney General is sponsored by Council Delegates Young Jeff Tom and Kee Yazzie Mann. It contains no justification or analysis for the action.

On Nov. 9, the Judiciary Committee voted to amend its hearing rules to allow for the removal of permanent Navajo Nation judges or justices from office. Council Delegate Ernest Yazzie said the legislation was necessary because judges or justices “may have corrupted minds.”

Legislation to remove Navajo Nation Supreme Court Chief Justice Herb Yazzie is sponsored by Council Delegate Raymond Joe, chairman of the Public Safety Committee. It, too, contains no justification or analysis.

On Oct. 12, the Judiciary Committee voted against the permanent appointment of Associate Justice Eleanor Shirley. Despite Justice Shirley receiving all favorable recommendations, Judiciary Committee Chairman Kee Allen Begay said that the committee did not like Justice Shirley’s “demeanor and poise.”

On Oct. 13, the committee also denied the permanent appointment of Associate Justice Louise Grant even though she had retired from the Navajo Nation Supreme Court on Oct. 8. Chairman Begay said it gave Justice Grant an unsatisfactory evaluation because Chief Justice Yazzie had not produced copies of her two-year probationary evaluation.

The Chief Justice had not done so because Justice Grant had retired, a performance evaluation was unnecessary, and the hearing on her performance was a moot point. The committee conducted its hearing without Justice Grant present.

President Shirley warned that with the Council having less than two months remaining in office, action to remove these officials would convey the unmistakable appearance of retaliation for recent decisions the delegates have not liked.

According to delegates’ statements, these include the Attorney General’s decision to expand his special investigation to include alleged misuse of discretionary funds to benefit delegates’ family members, and the Window Rock District Court’s Oct. 28 decision to invalidate the Judicial Elections Referendum Act from the Nov. 2 election ballot.

Firing these officials and removing the Chief Justice would not result in any tangible benefit to the Council beyond revenge or retaliation. To the contrary, it could expose the delegates to legal jeopardy.

The action would be viewed as a conflict of interest, a self-serving attempt to try to stop the special investigation and prosecution from continuing, and a violation of the conditions of release for each delegate who has been indicted.

Among the conditions of release that each of the 77 Council delegates signed are:

- No interceding or interference in the legal functions of the Office of the Prosecutor as stated in 2 NNC § 1984.
- No retaliation against any party or witness under 2 NNC § 470.
- Abide with the general prohibition against engaging in activities that could be construed as a conflict of interest under 2 NNC § 3745.

Navajo Nation law gives the Attorney General prosecutorial discretion to determine whether an investigation is warranted. Mr. Denetsosie determined that it was last December when he recommended that a special prosecutor be hired.

Firing the Attorney General and Deputy Attorney General would not result in stopping the special investigation because Special Prosecutor Alan Balaran works for the Special Division of the Window District Court, not the Department of Justice.

Action to fire the Attorney General and Deputy Attorney General is further unwise because legislation to do so would constitute a bill of attainder that is illegal under the Navajo Bill of Rights, Title 1 § 3.

A bill of attainder is a legislative act that singles out an individual for punishment. Its prohibition is a general safeguard against trial by legislature.

Finally, without justification, the firing of the Attorney General and the Deputy Attorney General could expose the Navajo Nation to legal action for wrongful firing.

The Supreme Court has repeatedly held that the fundamental Navajo principle of “talking things out” be applied in cases where “persons directly affected by a decision should have the opportunity to be heard.”

Precedent exists in the 2007 firing of former Superintendent of Education Tommy Lewis by the Navajo Nation Board of Education. Dr. Lewis filed a complaint with the Navajo Office of Labor Relations, claiming his rights were violated under *Diné* Fundamental Law which requires a courteous and respectful way of solving disagreements and disputes.

In 2008, an undisclosed settlement was reached and Dr. Lewis received back pay and benefits.